north dakota department of human services

Medical Services
(701) 328-2321
Toll Free 1-800-755-2604
Fax (701) 328-1544
TTY (701) 328-3480
Provider Relations (701) 328-4030

John Hoeven, Governor
Carol K. Olson, Executive Director

PROVIDER NOTICE

Date: April 2007

To: Select North Dakota Medicaid Participating Providers

From: Maggie D. Anderson, Director, Division of Medical Services

RE: Employee Policies Regarding Prevention and Detection of Medicaid Fraud and Abuse

Effective Date: Immediately

Section 6032 of the Deficit reduction Act of 2005 (Pub. L. 109-171), mandates that any provider or provider entity that receives payments, in any federal fiscal year, of at least $5,000,000 from any state Medicaid program must have written policies for all employees, including management, and for all employees of any contractor or agent.

You are receiving this letter because you are a provider or part of a provider entity that likely receives payments, in any federal fiscal year (October 1 through September 30), of at least $5,000,000 from the North Dakota Medicaid program. The definition of a provider "entity" has been established by the Centers for Medicare and Medicaid Services (CMS) in a December 13, 2006 letter to all State Medicaid Directors. (Enclosed) Per additional guidance received from CMS on March 22, 2007: (1) An entity is an organizational unit that furnishes Medicaid health care items or services, and includes all sub-units of that organizational unit that furnish Medicaid health care items or services even if the components are separately incorporated or located in different states. (2) Payments from multiple states are not aggregated to reach the $5 million threshold. However, once an organization meets the $5 million annual threshold and is considered an entity, the entity must provide education to all its employees, regardless of whether those employees are located in different states.

The required written policies must provide detailed information about the following:

- The Federal False Claims Act under title 31 of the United States Code, sections 3729 through 3733;
- Administrative remedies for false claims and statements under title 31 of the United States Code, chapter 38;
- Any State laws pertaining to civil or criminal penalties for false claims and statements;
- Whistleblower protections under such laws; and

600 East Boulevard Avenue Department 325 -- Bismarck, ND 58505-0250
www.nd.gov/humanservices

- The provider or provider entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

These policies may be written or electronic form, but must be disseminated and readily available to all employees and to all employees of any contractor, or agent, and must be included in any employee handbook of the provider or provider entity. The information required regarding the Federal False Claims Act, federal administrative remedies, state laws, and whistleblower protections is limited to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in Title 42 of the United States Code, section 1320a-7b(f)).

Compliance with these requirements is MANDATORY for providers or provider entities receiving at least $5,000,000 from the North Dakota Medicaid program in any federal fiscal year. The $5,000,000 amount will be based on paid claims, net of any adjustments to those claims.

North Dakota Department of Human Services (Department) will monitor compliance with these new federal requirements. In doing so, **it will be the responsibility of providers or provider entities to make the determination as to whether they meet the $5,000,000 threshold.**

If providers or provider entities determine that they meet the threshold, they must complete, sign and submit the enclosed False Claims Education Certification.

This form must be returned by May 18, 2007. In future years, the information will be required to be provided **annually** in the quarter following the end of each federal fiscal year (October to December), but before January 1 of the following year.

The required information, initially to be provided by May 18, 2007, should be sent to:

Attention: Barb Fischer
Division of Medical Services
ND Department of Human Services
600 East Boulevard Avenue Dept 325
Bismarck ND 58505-0250

The North Dakota Medicaid program has no discretion in enforcing this provision, as it is a federal requirement. Any provider or provider entity that fails to comply with this information submission will be subject to sanction, including probation, suspension, or termination or participation in the North Dakota Medicaid program.

If you have any questions, please contact ND Medicaid Provider Relations at 1-800-755-2604, locally at 701-328-4043, or by email at dhsmedicalsrvcs@nd.gov.

Enclosures:

- State Medicaid Director Letter – December 13, 2006
- False Claims Education Certification

DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
7500 Security Boulevard, Mail Stop S2-26-12
Baltimore, Maryland 21244-1850

Center for Medicaid and State Operations

SMDL #06-024

December 13, 2006

Dear State Medicaid Director:

We are writing to offer guidance to State Medicaid agencies on the implementation of section 6032 of the Deficit Reduction Act of 2005. This provision establishes section 1902(a)(68) of the Social Security Act (the Act), and relates to "Employee Education About False Claims Recovery."

The following definitions are included in the accompanying State Plan Preprint, although additional guidance in this letter further clarifies the Preprint:

An "entity" includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for-profit, which receives or makes payments, under a State plan approved under title XIX or under any waiver of such plan, totaling at least $5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the $5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an entity (e.g., a State mental health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity.

An entity will have met the $5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made by January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

An "employee" includes any officer or employee of the entity.

A "contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the entity.

It is the responsibility of each entity to establish and disseminate written policies which must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. Although section 1902(a)(68)(C) refers to "any employee handbook," there is no requirement that an entity create an employee handbook if none already exists.

An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in section 1902(a)(68)(A). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse. The Centers for Medicare & Medicaid Services (CMS) is not providing model language, though States may elect to do so.

The provisions of section 1902(a)(68) of the Act must be implemented no later than January 1, 2007, except as provided in the section 6034(e) delayed effective date of the Deficit Reduction Act of 2005. To the extent a State determines that it requires legislation to implement this section and wishes to avail itself of the section 6034(e) delayed effective date, it must request through CMS that the Secretary concur with the determination that legislation is required.

The requirements of this law should be incorporated into each State's provider enrollment agreements. Each State must also determine the manner by which it will ensure an entity's compliance with section 1902(a)(68), which information each State must include in its State Plan along with a description of the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis. Each State shall so amend its State Plan not later than March 31, 2007, or by the end of the quarter in which the effective date of delayed implementation occurs, as described in section 6034(e). CMS may, at its discretion, independently determine compliance through audits of entities or other means. CMS may also review a State's procedures through its routine oversight of States.

If you have any questions on this guidance, please direct them in writing to: Mr. Robb Miller, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, Medicaid Integrity Group, 7500 Security Boulevard, Mailstop B2-15-24, Baltimore, MD 21244 or Ms. Claudia Simonson, Centers for Medicare & Medicaid Services, Center for Medicaid and State Operations, Medicaid Integrity Group, Division of Field Operations, 233 North Michigan Avenue, Suite 600, Chicago, IL 60601 or robb.miller@cms.hhs.gov or claudia.simonson@cms.hhs.gov.

Sincerely,

/s/

Dennis G. Smith
Director

Enclosure

FALSE CLAIMS EDUCATION CERTIFICATION

ND DEPARTMENT OF HUMAN SERVICES/MEDICAL
MEDICAL SERVICES DIVISION
SFN 875 (4-2007)

Name of Entity	Tax ID Number

Provider Names and North Dakota Medicaid Provider Numbers enrolled under umbrella entity's Tax ID number:

Provider Name	Provider Number	Provider Name	Provider Number

The above named entity receives Medicaid payments in excess of $5,000,000 annually. In compliance with the False Claims Education Requirements, I certify that:

* Written policies and policies for the education of employees regarding false claims education been disseminated.
* The written policies include information about the entities policies and procedures for detecting and preventing waste, fraud and abuse.
* The employee handbook contains information on the Rights of Employees to be protected as whistleblowers, as well as administrative remedies, civil and criminal penalties.

Representative or Designee of Entity and Title	Date